

Valuation of Land (Fee Exemption) Amendment Regulation 2022

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Scott Stewart MP, Minister for Resources provide this human rights certificate with respect to the *Valuation of Land (Fee Exemption) Amendment Regulation 2022* (Amendment Regulation) made under the *Land Valuation Act 2010* (Land Valuation Act).

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The Land Valuation Act provides a framework for making, issuing and storing valuations of land and provides for how land is to be valued for particular other Acts. The responsibility to determine statutory valuations under the Land Valuation Act rests upon the valuer-general. The valuer-general must maintain a valuation roll for each local government area documenting specific information derived from the statutory valuation process.

The public can access valuation roll information upon payment of the fee prescribed in the *Valuation of Land Regulation 2003* (Valuation of Land Regulation). The Valuation of Land Regulation is subordinate legislation to the Land Valuation Act which outlines the products containing valuation roll information that are available to the public, and the corresponding fee required to be paid to the valuer-general.

The Amendment Regulation prescribes an exemption allowing certain products containing valuation roll information to be supplied without cost to eligible persons under the *Native Title Act 1993* (Cwlth) (Native Title Act) if the entry on the valuation roll relates to a prescribed matter under the Native Title Act. This will allow eligible persons to pursue legislative entitlements under the Native Title Act without incurring a cost barrier under the Valuation of Land Regulation.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I consider that the Amendment Regulation:

- Engages and is relevant to the right to recognition and equality before the law, and
- Engages and limits the right to privacy.

Recognition and equality before the law

Applying to only a select group, the Amendment Regulation engages the right to recognition and equality before the law under section 15 of the *Human Rights Act 2019*. The Amendment Regulation will exempt only eligible persons from the requirement to pay the prescribed fee for the valuation information if the entry on the valuation roll relates to a prescribed matter. In supplying this information without cost, the existing cost barrier to pursue certain entitlements under the Native Title Act will be removed. Therefore, the Amendment Regulation will assist or advance persons disadvantaged because of discrimination. This is compliant with section 15(5) of the *Human Rights Act 2019* and does not limit the right to recognition and equality before the law.

Privacy

The Amendment Regulation will exempt eligible persons from paying the fee prescribed under Schedule 2 of the Valuation of Land Regulation for items 2(a), 4(c) and 4(e). These items contain personal information as required under the Land Valuation Act. As the Amendment Regulation will change the way in which a person's publicly held information may be accessed, it will engage and limit the right to privacy.

Consideration of reasonable limitations on human rights (section 13 *Human Rights Act 2019*)

(a) the nature of the right

The right to privacy protects a person's right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with. The Amendment Regulation limits this right as it will change the way in which valuation roll information may be accessed. Currently, if the general public seeks access to specific entries on the valuation roll, this information can only be accessed upon payment of the fee prescribed under Schedule 2 of the Valuation of Land Regulation. The Amendment Regulation will change this, allowing personal information from the valuation roll to be accessed without cost by eligible persons if the entry on the valuation roll relates to a prescribed matter. This new method of obtaining valuation information will limit the right to privacy.

(b) the nature of the purpose of the limitation, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Certain processes under the Native Title Act require, or are informed by, a determination of land value. For example, where a native title holder's rights and interests were extinguished or impaired by a past act attributable to the State, the Native Title Act provides them with a right to compensation. The value of this compensation can be determined as a component of an indigenous land use agreement between the native title holders and the State. The historical value of the relevant land is used to determine the economic loss incurred by the native title holders, a key element of the calculation of compensation under the Native Title Act. Statutory valuation roll information provides an efficient and cost-effective method to determine land value for such purposes.

As the valuer-general can only supply information in such circumstances upon payment of the prescribed fee, these parties cannot receive the required information without incurring cost. In

the absence of the Amendment Regulation, the Land Valuation Act imposes a cost barrier on certain parties pursuing their rights and entitlements under the Native Title Act.

Where the State's involvement is required for a process under the Native Title Act, this cost barrier prevents the State from conducting such matters in good faith, and in a manner which is cost effective for both parties. By removing the existing cost barrier for eligible persons pursuing their entitlements under the Native Title Act, the limitation to the right to privacy allows the Amendment Regulation to assist a group of persons disadvantaged by discrimination, promote the distinct cultural rights of Aboriginal peoples and Torres Strait Islander peoples, and ensure the State acts in accordance with Queensland's Path to Treaty Commitment.

(c) the relationship between the limitation and its purpose, including whether the limitation helps to achieve the purpose

The limitation to the right to privacy is necessary to achieve the purposes as outlined. Aboriginal peoples and Torres Strait Islander peoples inhabited Australia prior to European settlement and were progressively dispossessed of their land, often without compensation. As a result of these injustices, the Native Title Act cites Aboriginal peoples and Torres Strait Islander peoples, as a group, to be the most disadvantaged members of Australian society. The Amendment Regulation removes the cost barrier to native title holders when pursuing their entitlements under the Native Title Act. In doing so, the limitation to the right to privacy assists a group disadvantaged due to discrimination while promoting the distinct cultural rights afforded to Aboriginal peoples and Torres Strait Islander peoples under the *Human Rights Act 2019*.

The limitation also supports the State's ability to ensure its involvement in native title matters occur in good faith, such as by ensuring indigenous land use agreements are able to be made without either party incurring unnecessary cost. This is consistent with Queensland's Path to Treaty Commitment, the key objective of which was to reframe the relationship between Aboriginal and Torres Strait Islander peoples and the Queensland Government. The Amendment Regulation contributes to this by allowing acts of dispossession to be recognised and compensated, in accordance with the rights and entitlements afforded to Aboriginal and Torres Strait Islander peoples as the first peoples of Queensland.

(d) whether there are any less restrictive and reasonably available ways to achieve the purpose

There is no less restrictive and reasonably available way to achieve the purpose. Without the Amendment Regulation, native title parties requiring valuation roll information can only access the information via payment of the prescribed fee. Alternatively, independent expert advice can be obtained but this entails higher costs and requires cross-examination which lengthens the negotiation process. Neither of these alternatives to the Amendment Regulation achieve the purposes outlined.

While the right to privacy is limited by the Amendment Regulation, the risk of this limitation is minimal. Risk mitigation is achieved primarily due to the exemption's narrow scope. Persons eligible for the fee exemption under the Amendment Regulation include only the following parties:

- 1 or more common law holders under the Native Title Act, section 56, included in a determination of native title;

- a person in a compensation claim group who, under the Native Title Act, section 251B, is authorised by all the persons in the group to make an application under the Native Title Act, section 50(2);
- a registered native title body corporate;
- a registered native title claimant;
- a representative Aboriginal/Torres Strait Islander body.

Furthermore, to ensure that public information cannot be supplied under the Amendment Regulation arbitrarily, the exemption will only apply if the entry on the valuation roll sought by the eligible person relates to:

- land that will be affected by a future act and in relation to which the person is a native title party; or
- land that is, or is proposed to be, the subject of an indigenous land use agreement to which the person is, or proposes to be, a party; or
- land the subject of a compensation application that has been made by or for the person.

If an eligible person satisfies this test, the scope of the exemption is then narrowed further allowing only items 2(a), 4(c) and 4(e) of Schedule 2 of the Valuation of Land Regulation to be supplied without cost. As a result of these safeguards, the risk of the limitation to the right to privacy has been mitigated significantly and is compatible with the *Human Rights Act 2019*.

(e) the balance between the importance of the purpose of the limitation and the importance of preserving the human right, taking into account the nature and extent of the limitation

The limitation to the right to privacy posed by the Amendment Regulation is considered reasonable and balanced. The limitation assists Aboriginal peoples and Torres Strait Islander peoples while promoting their distinct cultural rights. Similarly, the limitation allows the State to conduct or facilitate native title matters in good faith, and in a manner reflecting Queensland's Path to Treaty Commitment. The limitation entails minimal risk, mitigated by the safeguards narrowing the scope of the exemption and ensure the information is only supplied where intended. Due to these factors, the limiting law strikes a fair balance between the purpose of the limitation and the preservation of the human right.

Conclusion

I consider that the *Valuation of Land (Fee Exemption) Amendment Regulation 2022* is compatible with the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

SCOTT STEWART MP
Minister for Resources

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